

Senate Daily Reader

Friday, February 17, 2006

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State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

527M0321

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB 1015** - 02/14/2006

Introduced by: The Committee on Appropriations at the request of the Board of Regents

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Regents to acquire an equestrian
2 facility for South Dakota State University and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Board of Regents shall select a site for equestrian facilities including
5 approximately fifty-seven thousand square feet of buildings, ninety-five thousand square feet
6 of site improvements, and approximately fifteen acres of pasture development from within the
7 lands acquired pursuant to section 3, chapter 96, of the 2001 Session Laws. The board shall
8 lease that site, together with such portions of surrounding grounds as may be needed for
9 construction purposes, to the South Dakota State University Foundation to permit the foundation
10 to construct the structures to house the equestrian facilities.

11 Section 2. In consideration for the lease authorized in section 1 of this Act, the foundation
12 shall construct the project in accordance with the requirements of chapters 5-14 and 5-18 just
13 as though the structures and improvements comprising the equestrian facilities were constructed
14 by the Board of Regents. However, the foundation shall enter into all contracts for the
15 construction of the facility and make all payments therefor, once the payments have been duly



1 authorized by the Bureau of Administration and the executive director of the Board of Regents.

2 Section 3. The term of the lease authorized in section 1 of this Act may not exceed the time
3 required for site preparation and construction through project acceptance plus ten years from the
4 date of acceptance.

5 Section 4. The Board of Regents shall lease the equestrian facilities constructed pursuant to
6 this Act from the foundation for a period of ten years from the date of acceptance at an annual
7 lease payment of one hundred sixty-five thousand dollars.

8 Section 5. The South Dakota State University Foundation shall maintain and repair the
9 equestrian facilities during the term of the leaseback.

10 Section 6. Upon termination of the lease and leaseback authorized by the Act, the foundation
11 shall donate the facility and all right or interest that it may have in the equestrian facilities to the
12 Board of Regents, on behalf of the State of South Dakota, for the use and benefit of South
13 Dakota State University and the Board of Regents may accept the equestrian facilities on behalf
14 of the State of South Dakota, for the use and benefit of South Dakota State University.

15 Section 7. No general fund dollars may be used for the maintenance and repair or lease
16 payments of the facility authorized by this Act.

17 Section 8. Whereas, this Act is necessary for the support of the state government and its
18 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
19 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

444M0590

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1093** - 02/15/2006

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Van Norman, Bradford, Elliott, Gillespie, Glover, Haley, Halverson, Hargens, Kroger, Lange, Miles, Roberts, Sigdestad, Street, Thompson, and Valandra and Senator Two Bulls

1 FOR AN ACT ENTITLED, An Act to establish certain criteria regarding the construction and
2 sale of homes by a state agency or the South Dakota Housing Development Authority.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Any program established by any state agency or the South Dakota Housing
5 Development Authority for the primary purpose of constructing or selling homes shall meet the
6 following conditions:

7 (1) The home to be constructed or sold does not exceed eight hundred square feet;

8 (2) The purchaser of the home is either disabled as defined in subdivision 10-6A-1(4) or
9 sixty-two years of age or older, or both;

10 (3) The home will be the primary residence of the purchaser;

11 (4) The home will not be placed in a municipality with a population of five thousand or
12 more;

13 (5) The purchaser of the home has a household income that does not exceed sixty-five
14 percent of the median household income of the county where the person is placing



1 the house; and

2 (6) The purchaser of the home has a net worth that does not exceed a value that is twice
3 the median household income of the county where the person is placing the house.

4 This section does not apply to any home owned, purchased, or received by any state agency
5 or the South Dakota Housing Development Authority for another purpose.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

780M0459

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1110 - 02/02/2006

Introduced by: Representatives Krebs, Boomgarden, Faehn, Frost, Garnos, Hargens, Haverly, Koistinen, Kroger, Miles, Peters, Sebert, and Willadsen and Senators Greenfield, Apa, Duniphan, Gray, Hansen (Tom), McCracken, Olson (Ed), Peterson (Jim), Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to provide compensation to certain retailers for collecting
2 and remitting the sales tax.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any person required to file a return and remit the tax imposed by this chapter on a monthly
7 basis and who timely files the return and pays the tax is allowed, as compensation for the
8 expense of collecting and paying the tax monthly, a credit equal to one and one-half percent of
9 the gross amount of the tax due. However, the credit may not exceed seventy dollars per month.

10 Section 2. This Act is effective on July 1, 2007.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

484M0586

HOUSE ENGROSSED NO. **HB 1153** - 02/01/2006

Introduced by: Representatives Buckingham, Cutler, Hunt, and Krebs and Senator Gant

1 FOR AN ACT ENTITLED, An Act to revise the definition of a prohibited sexual act.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That subdivision (16) of § 22-24A-2 be amended to read as follows:

4 (16) "Prohibited sexual act," actual or simulated sexual intercourse, sadism, masochism,
5 sexual bestiality, incest, masturbation, or sadomasochistic abuse; actual or simulated
6 exhibition of the genitals ~~or~~, the pubic or rectal area, or the bare feminine breasts, in
7 a lewd or lascivious manner; actual physical contact with a person's clothed or
8 unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the
9 intent to arouse or gratify the sexual desire of either party; defecation or urination for
10 the purpose of creating sexual excitement in the viewer; or any act or conduct which
11 constitutes sexual battery or simulates that sexual battery is being or will be
12 committed. The term includes encouraging, aiding, abetting or enticing any person
13 to commit any such acts as provided in this subdivision. The term does not include
14 a mother's breast-feeding of her baby;

15



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

295M0438

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1163** - 02/15/2006

Introduced by: Representatives O'Brien, Cutler, Faehn, Garnos, Gillespie, Haley, Hargens, Haverly, Hennies, Hunhoff, Jensen, Murschel, Nelson, Rausch, Rave, Roberts, Rounds, and Tidemann and Senators Bogue, Abdallah, Dempster, Duenwald, Hansen (Tom), Knudson, Moore, Olson (Ed), and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding court suspensions and
2 revocations of driver licenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-12-52.3 be amended to read as follows:

5 32-12-52.3. Upon a first conviction or a first adjudication of delinquency for a any violation,
6 while in a ~~motor~~ vehicle, of §§ 22-42-5 to ~~22-42-11~~ 22-42-9, inclusive, 22-42A-3, or 22-42A-4,
7 the court shall revoke the driver license or driving privilege of the ~~person~~ driver so convicted
8 for a period of one hundred eighty days.

9 Upon a second or subsequent conviction or a second or subsequent adjudication of
10 delinquency for a violation, while in a ~~motor~~ vehicle, of §§ 22-42-5 to ~~22-42-11~~ 22-42-9,
11 inclusive, 22-42A-3, or 22-42A-4, the court shall revoke the driver license or driving privilege
12 of the ~~person~~ driver so convicted for a period of one year or until the person's seventeenth
13 birthday, whichever is a longer period of time. For any offense under this section, the court may
14 issue an order, upon proof of financial responsibility pursuant to § 32-35-43.1, permitting the



1 person to operate a ~~motor~~ vehicle for purposes of the person's employment, attendance at school,
2 or counseling programs. Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and
3 26-8C, the Unified Judicial System shall notify the Department of Public Safety of any
4 conviction or adjudication of delinquency for a violation, while in a ~~motor~~ vehicle, of §§ 22-42-
5 5 to ~~22-42-11~~ 22-42-9, inclusive, 22-42A-3, or 22-42A-4. The period of revocation shall begin
6 on the date the person's revoked driver license is received by the court or the department. At the
7 expiration of the revocation period, a person may make application as provided by law and shall
8 pay the license fee prescribed in § 32-12-47.1.

9 Section 2. That § 32-12-52.4 be amended to read as follows:

10 32-12-52.4. Upon a first conviction or a first adjudication as a child in need of supervision
11 for a violation of § 35-9-2 while in a ~~motor~~ vehicle, the court shall suspend the driver license
12 or driving privilege of ~~any the driver of a vehicle who~~, if the driver was under the age of
13 twenty-one when the offense occurred, for a period of ~~six months~~ thirty days.

14 Upon a second conviction or a second adjudication as a child in need of supervision for a
15 violation of § 35-9-2 while in a vehicle, the court shall suspend the driver license or driving
16 privilege of the driver, if the driver was under the age of twenty-one when the offense occurred,
17 for a period of one hundred eighty days.

18 Upon a ~~second~~ third or subsequent conviction or a ~~second~~ third or subsequent adjudication
19 as a child in need of supervision for a violation of § 35-9-2 while in a ~~motor~~ vehicle, the court
20 shall suspend the driver license or driving privilege of ~~any the driver of a vehicle who~~, if the
21 driver was under the age of twenty-one when the offense occurred, for a period of one year. For
22 any offense under this section, the court may issue an order, upon proof of financial
23 responsibility pursuant to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for
24 purposes of the person's employment, attendance at school, or attendance at counseling

1 programs.

2 Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified
3 Judicial System shall notify the Department of Public Safety of any conviction or adjudication
4 for a violation, while in a ~~motor~~ vehicle, of § 35-9-2 or chapter 32-23. The period of suspension
5 ~~shall begin~~ begins on the date the person's suspended driver license is received by the court or
6 the Department of Public Safety. At the expiration of the period of suspension, a person may
7 make application to have the license reinstated and pay the license fee as prescribed in § 32-12-
8 47.1.

9 Section 3. That § 32-24-3 be amended to read as follows:

10 32-24-3. If a conviction for a violation of § 32-24-1 is for a second or subsequent offense
11 within a period of one year, such person is guilty of a Class 1 misdemeanor, and the court shall,
12 in pronouncing sentence, order that the defendant's driving privilege be ~~suspended~~ revoked for
13 thirty days. However, the court may ~~in its discretion~~ issue an order, upon proof of financial
14 responsibility pursuant to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for
15 purposes of the person's employment ~~during the hours of the day and the days of the week as~~
16 ~~set forth in the order~~, attendance at school, or attendance at counseling programs. The court may
17 also order the revocation of the defendant's driving privilege for a further period not to exceed
18 one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.

19 Section 4. That § 32-23-21 be amended to read as follows:

20 32-23-21. It is a Class 2 misdemeanor for any person under the age of twenty-one years to
21 drive, operate, or be in actual physical control of any ~~motor~~ vehicle:

- 22 (1) If there is physical evidence of 0.02 percent or more by weight of alcohol in the
23 person's blood as shown by chemical analysis of the person's breath, blood, or other
24 bodily substance; or

(2) After having consumed marijuana or any controlled drug or substance for as long as physical evidence of the consumption remains present in the person's body.

If a person is found guilty of or adjudicated for a violation of this section, the Unified Judicial System shall notify the Department of Public Safety. Upon conviction or adjudication, the court shall suspend that person's driver's license or operating privilege for a period of ~~six months~~ thirty days for a first offense, one hundred eighty days for a second offense, or one year for any ~~second~~ third or subsequent offense. However, the court may, ~~in its discretion~~ upon proof of financial responsibility pursuant to § 32-35.43.1, issue an order permitting the person to operate a ~~motor~~ vehicle ~~during the hours and days of the week set forth in the order~~ for purposes of the person's employment, attendance at school, or attendance at ~~court-ordered~~ counseling programs.

Section 5. That § 22-16-41 be amended to read as follows:

22-16-41. Any person who, while under the influence of an alcoholic beverage, any controlled drug or substance, marijuana, or a combination thereof, without design to effect death, operates or drives a ~~motor~~ vehicle of any kind in a negligent manner and thereby causes the death of another person, including an unborn child, is guilty of vehicular homicide. Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the court may also order that the driver's license of any person convicted of vehicular homicide be revoked for such period of time as may be determined by the court but in no case less than two years.

Section 6. That § 32-12-15 be amended to read as follows:

32-12-15. The issuance of an instruction permit, motorcycle instruction permit, restricted minor's permit, or motorcycle restricted minor's permit is on a probationary basis. The Department of Public Safety upon the receipt of a record of conviction for a traffic violation or

1 for a violation of the restrictions in § 32-12-11, 32-12-11.1, 32-12-12, 32-12-12.1, 32-12-13,
2 or 32-12-14, committed prior to the minor's sixteenth birthday shall suspend ~~or revoke~~ the
3 minor's driving privileges according to the following schedule:

- 4 (1) A felony or Class 1 misdemeanor traffic conviction--suspension until the minor's
5 sixteenth birthday or as otherwise required by law;
- 6 (2) A first Class 2 misdemeanor traffic conviction--suspension for thirty days or as
7 otherwise required by law;
- 8 (3) A first conviction of a violation of the conditions of an instruction permit, a
9 motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted
10 minor's permit--suspension for thirty days or as otherwise required by law;
- 11 (4) A second Class 2 misdemeanor traffic conviction--~~revocation~~ suspension until the
12 minor's sixteenth birthday or for ninety days, whichever period is longer, or as
13 otherwise required by law; and
- 14 (5) A second conviction of a violation of the conditions of an instruction permit, a
15 motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted
16 minor's permit--~~revocation~~ suspension until the minor's sixteenth birthday or for
17 ninety days, whichever period is longer, or as otherwise required by law.

18 No permit may be suspended for a first violation of § 32-14-9.1, 32-21-27, 32-25-5, 32-26-
19 20, or 34A-7-7, ~~or 32-26-20~~.

20 If a minor has no instruction permit, motorcycle instruction permit, restricted minor's permit,
21 or motorcycle restricted minor's permit and is convicted of any traffic violation prior to the
22 minor's sixteenth birthday, the department shall suspend or revoke the minor's driving privilege
23 or privilege to apply for a driver license as provided in this section. A conviction for any traffic
24 violation that occurs prior to the issuance of an instruction permit, motorcycle instruction

1 permit, restricted minor's permit, motorcycle restricted minor's permit, motorcycle operator's
2 license or an operator's license shall be placed on the driving record and given the same
3 consideration as any violation that occurs following the issuance of an instruction permit,
4 motorcycle instruction permit, restricted minor's permit, motorcycle restricted minor's permit,
5 motorcycle operator's license, or an operator's license.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

491M0619

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1164 - 02/15/2006

Introduced by: Representatives Haverly, Buckingham, and Putnam and Senators Napoli, Abdallah, and Duniphan

1 FOR AN ACT ENTITLED, An Act to revise the taxation of leased motorcycles and motorized
2 bicycles.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-5B-21 be amended to read as follows:

5 32-5B-21. The tax imposed by §§ 32-5B-1, 32-5B-1.1, 32-5B-4(7), and 32-5B-21 to 32-5B-
6 24, inclusive, and calculated in the manner set out in § 32-5B-4 on the sale or use of leased
7 vehicles subject to titling and registration applies to vehicles with a gross vehicle weight ratings
8 of less than sixteen thousand pounds or vehicles defined in subdivision 32-9-3(3), ~~excluding~~
9 including motorcycles and motorized bicycles. No certificate of title may be issued until the tax
10 is paid.

11 The county treasurer shall require every applicant for registration of a vehicle subject to tax
12 under §§ 32-5B-1, 32-5B-1.1, 32-5B-4(7), and 32-5B-21 to 32-5B-24, inclusive, to supply
13 information as is deemed necessary as to the date of the lease transaction, the lease price, and
14 other information relative to the lease of the vehicle.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

366M0661

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1199** - 02/15/2006

Introduced by: Representatives Gillespie, Buckingham, and Hennies and Senators Koskan,
Abdallah, Broderick, Moore, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to prohibit the release of information concerning the
2 applicants and holders of permits to carry a concealed pistol.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No state agency, political subdivision, official, agent, employee of any state agency or
7 political subdivision, may knowingly release or permit access to any application, list, record or
8 registry of applicants or holders of permits to carry a concealed pistol to any person except
9 another law enforcement agency or the secretary of state.

10 Section 2. That § 23-7-8.6 be amended to read as follows:

11 23-7-8.6. No state agency, political subdivision, official, agent, or employee of any state
12 agency or political subdivision, ~~or any other person~~ may knowingly keep or cause to be kept any
13 list, record, or registry of privately owned firearms or any list, record, or registry of the owners
14 of those firearms, or any list, record, or registry of holders of permits to carry a concealed pistol.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

625M0529

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1218 - 02/15/2006

Introduced by: Representatives Murschel, Brunner, Cutler, Elliott, Frost, Hennies, Jensen, Kraus, Novstrup, O'Brien, Rave, and Vehle and Senators Sutton (Dan), Abdallah, Dempster, Gant, Gray, and Kooistra

1 FOR AN ACT ENTITLED, An Act to establish a task force to study education for divorcing
2 parents and visitation and custody matters.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is established the Task Force to Study Education for Divorcing Parents and
5 Visitation and Custody Matters. The task force shall consist of seventeen members. Five
6 members shall be appointed by the speaker of the House of Representatives, five members shall
7 be appointed by the president pro tempore of the Senate, four members shall be appointed by
8 the Governor, and three members shall be appointed by the Chief Justice. Not all members
9 appointed by each appointive power may belong to the same political party. The initial
10 appointments shall be made no later than sixty days after the effective date of this Act. If there
11 is a vacancy on the task force, the vacancy shall be filled in the same manner as the original
12 appointment. The majority of the appointments shall include legislators. The appointments shall
13 also include a member who is a behavioral health care expert, divorced parent, divorce
14 mediator, attorney, a member of the South Dakota Council of Mental Health Centers, and a



1 representative of the Department of Social Services.

2 Section 2. The task force shall be under the supervision of the Executive Board of the
3 Legislative Research Council and staffed and funded as an interim legislative committee. The
4 executive board shall appoint the chair and vice chair of the task force who shall be members
5 of the Legislature.

6 Section 3. The task force shall study South Dakota's delivery of parent education for
7 divorcing parents with minor children, visitation and custody issues, and shall explore best
8 practice models of evidence-based curriculums, court-required education, and visitation
9 referees. The task force shall make recommendations to improve divorce outcomes for children
10 and families and shall submit its final report to the Governor, Legislature, and Chief Justice no
11 later than June 30, 2007.

State of South Dakota

EIGHTY-FIRST SESSION LEGISLATIVE ASSEMBLY, 2006

400M0640

HOUSE ENGROSSED NO. **HB 1235** - 02/10/2006

Introduced by: The Committee on Education at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to increase the compulsory attendance age for school
2 attendance.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-27-1 be amended to read as follows:

5 13-27-1. Every person having control of a child, who is six years old by the first day of
6 September and who has not exceeded the age of ~~sixteen~~ eighteen, shall cause the child to
7 regularly and annually attend some public or nonpublic school for the entire term during which
8 the public school in the district in which the person resides, or the school to which the child is
9 assigned to attend, is in session, until the child reaches the age of ~~sixteen~~ eighteen years, unless
10 the child has graduated or is excused as provided in this chapter. The eighteen years of age
11 requirement does not apply to any child who was born from July 1, 1990 to June 30, 1992,
12 inclusive, and who has legally not regularly attended a public or nonpublic school at any time
13 from July 1, 2006 to June 30, 2008, inclusive.

14 Any child under age six enrolled in any elementary school or kindergarten program is
15 subject to the compulsory attendance statutes of this state. A waiver of the compulsory
16 attendance requirement for children under the age of seven years of age shall be granted by the



1 school district upon the request of the parents.

2 Section 2. The provisions of this Act are effective July 1, 2008.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0361

HOUSE ENGROSSED NO. **SB 28** - 02/15/2006

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to revise and correct certain provisions related to the
2 criminal code revision of 2005.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-7-8.1 be amended to read as follows:

5 22-7-8.1. If a defendant has been convicted of three or more felonies in addition to the
6 principal felony and none of the prior felony convictions was for a crime of violence as defined
7 in subdivision § 22-1-2(9), the sentence for the principal felony shall be enhanced by two levels
8 but in no circumstance may the enhancement exceed the sentence for a Class C felony. A
9 defendant sentenced pursuant to this section is eligible for consideration for parole pursuant to
10 ~~§ 24-15-5~~ § 24-15A-32 if the defendant receives a sentence of less than life in prison.

11 Section 2. That § 24-15A-32 be amended to read as follows:

12 24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of
13 life or death, or an indeterminate sentence which is not yet set to a term of years by the board,
14 shall have an initial parole date set by the department. This date shall be calculated by applying
15 the percentage indicated in the following grid to the full term of the inmate's sentence pursuant
16 to § 22-6-1. The following crimes or an attempt to commit, or a conspiracy to commit, any of



1 the following crimes shall be considered a violent crime for purposes of setting an initial parole
2 date: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree
3 or burglary in the second degree if committed before July 1, 2006, arson, kidnapping, felony
4 sexual contact as defined in §§ 22-22-7 and 22-22-19.1, child abuse, felony sexual contact as
5 defined in § 22-22-7.2, felony stalking as defined in §§ 22-19A-2 and 22-19A-3, photographing
6 a child in an obscene act, felony assault as defined in § 22-18-26, felony simple assault as
7 defined in § 22-18-1, commission of a felony while armed as defined in §§ 22-14-12 and 22-14-
8 13.1, discharging a firearm at an occupied structure or motor vehicle as defined in § 22-14-20,
9 discharging a firearm from a moving vehicle as defined in § 22-14-21, and criminal pedophilia
10 as defined in § 22-22-30.1:

Felony Convictions				
Felony Class	First	Second	Third	
Nonviolent				
Class 6	.25	.30	.40	
Class 5	.25	.35	.40	
Class 4	.25	.35	.40	
Class 3	.30	.40	.50	
Class 2	.30	.40	.50	
Class 1	.35	.40	.50	
<u>Class C</u>	<u>.35</u>	<u>.40</u>	<u>.50</u>	
Violent				
Class 6	.35	.45	.55	
Class 5	.40	.50	.60	
Class 4	.40	.50	.65	
Class 3	.50	.60	.70	
Class 2	.50	.65	.75	
Class 1	.50	.65	.75	

1	<u>Class C</u>	<u>.50</u>	<u>.65</u>	<u>.75</u>
2	Class B	1.0	1.0	1.0
3	Class A	1.0	1.0	1.0

4 Each inmate shall serve at least sixty days prior to parole release. Inmates with life sentences
5 are not eligible for parole. An initial parole date through the application of this grid may be
6 applied to a life sentence only after the sentence is commuted to a term of years. A Class A or
7 B felony commuted to a number of years shall be applied to the ~~Class A~~ Class C violent column
8 of the grid

9 Section 3. That § 22-30A-35 be amended to read as follows:

10 22-30A-35. The service of a notice of dishonor in accordance with §§ 22-30A-32 and 22-
11 30A-34 is not a an element of the crime of theft by insufficient funds check or theft by no
12 account check, nor is it an element of proof thereof or a defense to any prosecution therefor.

13 If the notice required by §§ 22-30A-32 and 22-30A-34 is returned undelivered, or if it
14 appears to the state's attorney that there is reasonable cause to believe that the writer of the
15 check intends to remove himself or herself from the jurisdiction of the court, the state's attorney
16 may elect to prosecute without such notice. However, if the insufficient funds check or no
17 account check is paid by the drawer to the holder, along with the costs and expenses provided
18 for in § 57A-3-421, within the thirty days after the notice is mailed or delivered to the drawer,
19 the check may not be prosecuted.

20 Section 4. That § 22-6-5.1 be amended to read as follows:

21 22-6-5.1. A court may sentence any person convicted of a crime committed while ~~he~~ that
22 person was a prisoner as defined by § 22-11A-1, to a term of not more than twice the maximum
23 term allowed by the statute for the commission of the same crime by a person not so confined.
24 However, the provisions of this section do not apply if, for the same offense, the prisoner is

1 subject to an enhanced penalty as an habitual offender.

2 Section 5. That § 26-11-3.1 be amended to read as follows:

3 26-11-3.1. Any delinquent child sixteen years of age or older against whom Class A, Class
4 B, Class C, Class 1, or Class 2 felony charges have been filed shall be tried in circuit court as
5 an adult. However, the child may request a transfer hearing which shall be conducted pursuant
6 to § 26-11-4 to determine if it is in the best interest of the public that the child be tried in circuit
7 court as an adult. In such a transfer hearing, there is a rebuttable presumption that it is in the best
8 interest of the public that any child, sixteen years of age or older, who is charged with a Class
9 A, Class B, Class C, Class 1, or Class 2 felony, shall be tried as an adult.

State of South Dakota

EIGHTY-FIRST SESSION LEGISLATIVE ASSEMBLY, 2006

772M0264

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 148** - 02/10/2006

Introduced by: Senators Abdallah, Dempster, Duniphan, Earley, Gant, Gray, Hansen (Tom), Kelly, Koskan, McCracken, Schoenbeck, Smidt, Sutton (Dan), and Sutton (Duane) and Representatives Cutler, Bradford, Brunner, Davis, Deadrick, Dennert, Dykstra, Faehn, Frost, Garnos, Gassman, Glenski, Hackl, Halverson, Hanks, Hargens, Haverly, Heineman, Hennies, Hills, Howie, Hunhoff, Hunt, Jerke, Klaudt, Kraus, Krebs, Kroger, McCoy, Michels, Miles, Murschel, Nelson, Novstrup, O'Brien, Pederson (Gordon), Rave, Rhoden, Rounds, Schafer, Street, Tornow, Turbiville, Valandra, Van Etten, Weems, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the sex offender
2 registry and the supervision of sex offenders.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-24B-1 be amended to read as follows:

5 22-24B-1. For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of
6 the following crimes regardless of the date of the commission of the offense or the date of
7 conviction:

8 (1) Rape as set forth in § 22-22-1;

9 (2) ~~Sexual~~ Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if
10 committed by an adult ~~and the adult is convicted of a felony;~~

11 (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2 ~~if~~



1 committed by an adult;

2 (4) Incest as set forth in § 22-22-19.1 if committed by an adult;

3 (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-
4 24A-3;

5 (6) Sale of child pornography as set forth in § 22-24A-1;

6 (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;

7 (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;

8 (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);

9 (10) Criminal pedophilia as previously set forth in § 22-22-30.1;

10 (11) Felony indecent exposure as previously set forth in former § 22-24-1 or indecent
11 exposure as set forth in § 22-24-1.2;

12 (12) Solicitation of a minor as set forth in § 22-24A-5;

13 (13) Felony aggravated indecent exposure as set forth in § 22-24-1.3;

14 (14) Bestiality as set forth in § 22-22-42;

15 (15) An attempt to commit any of the crimes listed in this section;

16 (16) Any crime committed in a place other than this state which would constitute a sex
17 crime under this section if committed in this state;

18 (17) Any federal crime or court martial offense that would constitute a sex crime under
19 federal law;

20 (18) Any crime committed in another state if that state also requires that anyone convicted
21 of that crime register as a sex offender in that state; or

22 (19) If the victim is a minor:

23 (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-
24 7.6;

(b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or

(c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29.

Section 2. That § 22-24B-2 be amended to read as follows:

22-24B-2. Any person who has been convicted for commission of a sex crime, as defined in § 22-24B-1, shall register as a sex offender. The term, convicted, includes a verdict or plea of guilty, a plea of nolo contendere, and a suspended imposition of sentence which has not been discharged pursuant to 23A-27-14 prior to July 1, 1995. Any juvenile fifteen years or older shall register as a sex offender if that juvenile has been adjudicated of a sex crime as defined in ~~§ 22-20(9), 22-22-7.2, or 22-24B-1~~ § 22-22-7.2, 22-24B-1(1), or 22-24B-1(9), or of an out-of-state or federal offense that is comparable to the elements of these three sex crimes or any crime committed in another state if the state also requires a juvenile adjudicated of that crime to register as a sex offender in that state. The sex offender shall register within ~~ten~~ five days of coming into any county to reside, temporarily domicile, attend school, attend postsecondary education classes, or work. Registration shall be with the chief of police of the municipality in which the sex offender resides, domiciles, attends school, attends classes, or works, or, if no chief of police exists, then with the sheriff of the county. A violation of this section is a ~~Class 1 misdemeanor~~. ~~However, any subsequent violation is a~~ Class 6 felony. Any person whose sentence is discharged under § 23A-27-14 after July 1, 1995, shall forward a certified copy of such formal discharge or release from probation by certified mail to the Division of Criminal Investigation and to local law enforcement where the person is then registered under this section. Upon receipt of such notice, the person shall be removed from the sex offender registry open to public inspection and shall be relieved of further registration requirements under this section.

Section 3. That § 22-24B-5 be amended to read as follows:

1 22-24B-5. The Division of Criminal Investigation shall mail a nonforwardable verification
2 form at least once annually to the last reported address of each person registered under § 22-
3 24B-2. The person shall return the verification form to the Division of Criminal Investigation
4 within ten days after receipt of any such form. The verification form shall be signed by the
5 person required to register and shall state that the person still resides at the address last reported
6 to the Division of Criminal Investigation. If the person fails to return the verification form to
7 the Division of Criminal Investigation within ten days after receipt of the form, the person is in
8 violation of this section. Nonreceipt of a registration verification does not constitute a defense
9 to failure to comply with this section. A violation of this section is a ~~Class 1 misdemeanor. Any~~
10 ~~subsequent violation~~ is a Class 6 felony.

11 Section 4. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as
12 follows:

13 The chief of police in the municipality in which the sex offender resides, or if no chief of
14 police exists, the sheriff of the county, shall annually confirm that the address listed on the sex
15 offender registry matches the residence of each registered sex offender. Such confirmation shall
16 be submitted to the Division of Criminal Investigation.

17 Section 5. That § 22-24B-6 be amended to read as follows:

18 22-24B-6. Any person who is registered as required by § 22-24B-2 and who is employed,
19 carries on a vocation, or attends postsecondary classes at an institution of higher education,
20 institution of higher learning, or technical institute in this state shall, within ~~ten~~ five days of any
21 commencement and within ~~ten~~ five days of termination of such enrollment or employment or
22 change in employer, report to the chief of police or county sheriff where the institution is located
23 and complete a registration update form. A violation of this section is a ~~Class 1 misdemeanor.~~
24 ~~Any subsequent violation~~ is a Class 6 felony.

Section 6. That § 22-24B-7 be amended to read as follows:

22-24B-7. Any person who is subject to the provisions of § 22-24B-2 shall ~~annually~~ reregister every six months in the same manner as may be provided by law for initial registration. Such person shall reregister during the calendar month during which the registrant was born. ~~However, if such person has previously registered pursuant to the provisions of § 22-24B-2 within ninety days immediately prior to the date of such person's birth, no subsequent reregistration is required pursuant to this section during the current annual reregistration cycle and six months following the person's birth month.~~

A violation of this section is a ~~Class 1 misdemeanor. However, any subsequent violation is~~ a Class 6 felony.

Section 7. That § 22-24B-8 be amended to read as follows:

22-24B-8. The registration shall include the following information which, unless otherwise indicated, shall be provided by the offender:

- (1) Name and all aliases used;
- (2) Complete description, photographs, ~~and~~ fingerprints and palm prints collected and provided by the registering agency;
- (3) Residence, length of time at that residence including the date the residence was established, and length of time expected to remain at that residence;
- (4) The type of sex crime convicted of; ~~and~~
- (5) The date of commission and the date of conviction of any sex crime committed;
- (6) Social Security number on a separate confidential form;
- (7) Driver license number and state of issuance;
- (8) Whether or not the registrant is receiving or has received any sex offender treatment;
- (9) Employer name, address, and phone number or school name, address, and phone

1 number;

2 (10) Length of employment or length of attendance at school; ~~and~~

3 (11) Occupation or vocation;

4 (12) Vehicle license plate number of any vehicle owned by the offender;

5 (13) Information identifying any internet accounts of the offender as well as any user
6 names, screen names, and aliases that the offender uses on the internet;

7 (14) A listing of all felony convictions, in any jurisdiction, for crimes committed as an
8 adult and sex offense convictions and adjudications subject to sex offender registry
9 provided by the offender and confirmed by the registering agency;

10 (15) A description of the offense, provided by the prosecuting attorney;

11 (16) Acknowledgment whether the offender is currently an inmate, parolee, juvenile in
12 department of corrections placement or under aftercare supervision, county or city
13 jail inmate or detainee in a juvenile detention center, provided by the offender and
14 confirmed by the administering body of the correctional facility;

15 (17) Acknowledgment whether the offender is subject to community safety zone
16 restrictions, provided by the registering agency; and

17 (18) The name, address and phone number of two local contacts, who have regular
18 interaction with the offender and the name, address and phone number of the
19 offender's next of kin.

20 In addition, at the time of the offender's registration, the registering agency will collect a
21 DNA sample and submit the sample to the South Dakota State Forensic Laboratory in
22 accordance with procedures established by the South Dakota State Forensic Laboratory. The
23 collection of DNA at the time of the registration is not required if the registering agency can
24 confirm that DNA collection and submission to the South Dakota State Forensic Laboratory has

1 already occurred.

2 Any failure by the offender to accurately provide the information required by this section
3 is a ~~Class 1 misdemeanor~~ Class 6 felony.

4 Section 8. That § 22-24B-10 be amended to read as follows:

5 22-24B-10. Within three days of registering a person pursuant to §§ 22-24B-1 to 22-24B-14,
6 inclusive, the registering law enforcement agency shall forward the information to the Division
7 of Criminal Investigation. The Division of Criminal Investigation shall maintain a file of all the
8 registrations and shall make them available to state, county, and municipal law enforcement
9 agencies on a twenty-four hour basis. An offender's registration compliance status and
10 registration information, other than the registrant's social security number, victim name, DNA
11 sample, and the names, addresses, and phone numbers for local contacts and next of kin are
12 public information. The provisions of §§ 23-5-11 and 23-6-14 do not apply to providing files
13 pursuant to §§ 22-24B-1 to 22-24B-14, inclusive. ~~The Division of Criminal Investigation file~~
14 ~~is not open to inspection by the public or any other person other than a law enforcement officer~~
15 ~~except as specifically provided in § 22-24B-11.~~

16 Section 9. That § 22-24B-12 be amended to read as follows:

17 22-24B-12. Any person required to register pursuant to §§ 22-24B-1 to 22-24B-14,
18 inclusive, who moves to a different residence address shall inform the law enforcement agency
19 with whom the person last registered of the new address, in writing, within ~~ten~~ five days. The
20 law enforcement agency shall, within three days of receipt, forward the information to the
21 Division of Criminal Investigation and to the law enforcement agency having jurisdiction of the
22 new residence. A failure to register pursuant to this section is a ~~Class 1 misdemeanor. Any~~
23 ~~second or subsequent failure to register pursuant to this section is a Class 6 felony.~~

24 Section 10. That chapter 22-24B be amended by adding thereto a NEW SECTION to read

as follows:

Any person who has been convicted of, or entered a plea of guilty to, one or more violations of §§ 22-24B-2, 22-24B-5, 22-24B-6, 22-24B-7, 22-24B-8 or 22-24B-12 is guilty of a Class 5 felony for any second or subsequent conviction of §§ 22-24B-2, 22-24B-5, 22-24B-6, 22-24B-7, 22-24B-8 or 22-24B-12.

Section 11. That chapter 23-5A be amended by adding thereto a NEW SECTION to read as follows:

Any person who is required to register as a sex offender pursuant to §§ 22-24B-1 to 22-24B-14, inclusive, shall provide a DNA sample as required in chapter 23-5A.

Section 12. That § 23A-27-12.1 be amended to read as follows:

23A-27-12.1. Upon receipt of an order that a defendant has been placed on probation to the court service department, the chief court services officer shall immediately assign the defendant to a court services officer for probation supervision.

All such probationers shall cooperate fully with the court services officer and comply with all directives thereby issued in their regard. If the sentencing judge has provided special conditions, including limited areas of residence or community access, required participation in treatment, enhanced reporting requirements, and use of electronic monitoring or global positioning units, for either a probationer or one released on a suspended sentence, then such person shall comply with such special conditions, and the court services officer is hereby charged with the responsibility for effecting compliance with such conditions.

Whenever the sentencing judge assesses probation costs as a condition of probation, the costs shall be paid to the clerk of the court who shall forward such costs on a monthly basis to the county treasurer for deposit in the county general fund.

Section 13. That § 24-15A-24 be amended to read as follows:

1 24-15A-24. The board and the department may place reasonable restrictions upon a parolee
2 which are designed to continue the parolee's rehabilitation, including limited areas of residence
3 or community access, required participation in treatment, enhanced reporting requirements, and
4 use of electronic monitoring or global positioning units. The board and the department shall
5 require the implementation of a restitution plan and payment of supervision fees, if reasonably
6 possible. The prior obligations of child support and restitution payments take precedence over
7 collection of supervision fees. All restrictions shall be in writing and shall be agreed to and
8 signed by the parolee.

9 Section 14. No law enforcement agency, employee of any law enforcement agency,
10 employee or official of any state and county agency and person contracting or appointed to
11 perform services under this Act is civilly or criminally liable for good faith conduct under this
12 Act.

State of South Dakota

EIGHTY-FIRST SESSION LEGISLATIVE ASSEMBLY, 2006

772M0263

HOUSE ENGROSSED NO. **SB 149** - 02/15/2006

Introduced by: Senators Abdallah, Dempster, Duniphan, Earley, Gant, Gray, Hansen (Tom), Kelly, Knudson, Koskan, Lintz, McCracken, Schoenbeck, Smidt, Sutton (Dan), and Sutton (Duane) and Representatives Cutler, Bradford, Brunner, Davis, Deadrick, Dennert, Dykstra, Faehn, Frost, Garnos, Glenski, Hackl, Hanks, Haverly, Heineman, Hennies, Hills, Howie, Hunhoff, Hunt, Jerke, Klaudt, Kraus, Krebs, Kroger, McCoy, Michels, Miles, Murschel, Nelson, Novstrup, O'Brien, Pederson (Gordon), Rhoden, Rounds, Schafer, Turbiville, Valandra, Van Etten, Weems, Wick, and Willadsen

1 FOR AN ACT ENTITLED, An Act to create community safety zones, to prohibit certain
2 persons from residing or loitering in community safety zones, and to provide penalties for
3 violations thereof.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. Terms used in this Act mean:

- 6 (1) "Community safety zone," the area that lies within five hundred feet from the
7 facilities and grounds of any school, public park, public playground, or public pool,
8 including the facilities and grounds itself;
- 9 (2) "Loiter," to remain for a period of time and under circumstances that a reasonable
10 person would determine is for the primary purpose of observing or contacting
11 minors;
- 12 (3) "School," any public, private, denominational, or parochial school offering preschool,



1 kindergarten, or any grade from one through twelve;

2 (4) "Residence," the address an offender lists for purposes of the sex offender registry
3 as provided for in subdivision § 22-24B-8(3).

4 Section 2. No person who is required to register as a sex offender pursuant to chapter 22-
5 24B may establish a residence or reside within a community safety zone unless:

6 (1) The person is incarcerated in a jail or prison or other correctional placement which
7 is located within a community safety zone;

8 (2) The person is placed in a health care facility licensed pursuant to chapter 34-12, or
9 certified under Title XVIII or XIX of the Social Security Act as amended to
10 December 31, 2001, or receiving services from a community service provider
11 accredited or certified by the Department of Human Services, which is located within
12 a community safety zone;

13 (3) The person was under age eighteen at the time of the offense and the offender was
14 not tried and convicted of the offense as an adult;

15 (4) The person established the residence prior to the effective date of this Act;

16 (5) The school, public park, public pool, or public playground was built or established
17 subsequent to the person's establishing residence at the location; or

18 (6) The circuit court has entered an order pursuant to section 7 of this Act exempting the
19 offender from the provisions of this Act.

20 A violation of this section is a Class 6 felony. Any subsequent violation is a Class 5 felony.

21 Section 3. No person who is required to register as a sex offender as defined in chapter 22-
22 24B may loiter within a community safety zone unless the person was under age eighteen at the
23 time of the offense and the offender was not tried and convicted of the offense as an adult or the
24 circuit court has entered an order pursuant to section 7 of this Act exempting the offender from

1 the provisions of this Act.

2 A violation of this section is a Class 6 felony. Any subsequent violation is a Class 5 felony.

3 Section 4. No city, county, municipality, or township may, by local ordinance, restrict or
4 mitigate residence or community access for convicted sex offenders inconsistent with the
5 provisions of this Act.

6 Section 5. An offender subject to community safety zone restrictions pursuant to this Act
7 who is eligible to seek exemption from these restrictions as provided for in section 6 of this Act
8 may petition the circuit court in the county where the person resides for an order to terminate
9 the person's obligation to comply with the community safety zone restrictions. The offender
10 shall serve the petition and all supporting documentation on the state's attorney in the county
11 where the offender currently resides, the office of the prosecutor in the jurisdiction where the
12 offense occurred, and the Office of the Attorney General. The state's attorney in the county
13 where the offender currently resides shall respond to each petition to request exemption from
14 the community safety zone restrictions.

15 No person petitioning the court under this section for an order terminating the persons's
16 obligation to comply with community safety zone restrictions is entitled to court appointed
17 counsel, publicly funded experts, or publicly funded witnesses.

18 The petition and documentation to support the request for exemption from the community
19 safety zone restrictions shall include:

- 20 (1) All information required for registration of convicted sex offenders in § 22-24B-8;
- 21 (2) A detailed description of the sex crime that was the basis for the offender to be
22 subject to community safety zone restrictions;
- 23 (3) A certified copy of judgment of conviction or other sentencing document; and
- 24 (4) The offender's criminal record.

1 The court may request that the petitioner provide additional information if the information
2 provided is incomplete or if the court desires more information relative to the request for
3 exemption.

4 Section 6. To be eligible for exemption from the community safety zone restrictions, the
5 petitioner shall show, by clear and convincing evidence, the following:

6 (1) That at least ten years have elapsed since the date the petitioner was convicted of the
7 offense that subjected the petitioner to community safety zone restrictions pursuant
8 to this Act. For purposes of this subdivision, any period of time during which the
9 petitioner was incarcerated or during which the petitioner was confined in a mental
10 health facility or during which the petitioner was on probation or parole supervision
11 does not count toward the ten-year calculation, regardless of whether such
12 incarceration, confinement or community supervision was for the sex offense
13 requiring registration or for some other offense;

14 (2) That the petitioner is not a recidivist sex offender. A recidivist sex offender is a
15 person who has been convicted or adjudicated for more than one sex crime listed in
16 subdivisions 22-24B-1(1) to (19), inclusive, regardless of when those convictions or
17 adjudications occurred. For purposes of this subdivision and subdivision (1) of this
18 section, a conviction or adjudication includes a verdict or plea of guilty; a verdict or
19 plea of guilty but mentally ill; a plea of nolo contendere; a suspended imposition of
20 sentence granted under § 23A-27-13, regardless of whether it has been discharged;
21 a deferred prosecution agreement entered by a prosecutor; and a determination made
22 in another state, federal jurisdiction, or courts martial that is comparable to any of
23 these events;

24 (3) That the petitioner has completely and truthfully complied with the registration and

1 reregistration requirements imposed under chapter 22-24B;

2 (4) That the petitioner has actually resided in South Dakota at least ten consecutive years
3 immediately prior to the filing of the petition. Residence as used in this subdivision
4 does not mean the registration address of an incarcerated sex offender; and

5 (5) The circumstances of the crime subjecting the offender to community safety zone
6 restrictions did not involve a child under age thirteen.

7 Section 7. If the court finds that all of the criteria provided for in section 6 of this Act have
8 been met and that the petitioner is not likely to offend again, then the court may, in its
9 discretion, enter an order terminating the petitioner's obligation to comply with the community
10 safety zone restrictions of this state. However, if the court finds that the offender has provided
11 false or misleading information in support of the petition, or failed to serve the petition and
12 supporting documentation upon the parties provided for in section 5 of this Act, then the petition
13 shall be denied. If the petition is denied, the petitioner may not file a subsequent petition for at
14 least two years from the date the previous petition was denied. The court shall forward any order
15 terminating the petitioner's obligation to comply with community safety zone restrictions to the
16 Division of Criminal Investigation.

17 Section 8. That § 22-22-38 be amended to read as follows:

18 22-22-38. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
19 who is discharged or paroled or temporarily released from an institution of the Department of
20 Corrections or the Department of Human Services or from any jail or other facility in this state
21 where the person was confined because of a conviction of an offense as described in § 22-22-30
22 shall, prior to discharge, parole, furlough, work release, or similar program outside the facility,
23 or release, be informed of the duty to register under §§ 22-22-30 to 22-22-39, inclusive, and
24 informed of community safety zone restrictions, by the institution in which the person was

1 confined. The institution shall require the person to read and sign any forms as may be required
2 by the Division of Criminal Investigation stating that the duty to register, community safety zone
3 restrictions, and the procedure for registration ~~has~~ have been explained. The institution shall
4 obtain the address where the person plans to reside upon discharge, parole, furlough, work
5 release, or similar program outside the facility, or release and shall report the address to the
6 Division of Criminal Investigation. The institution shall give one copy of the form to the person
7 and shall send one copy to the Division of Criminal Investigation and one copy to the law
8 enforcement agency having jurisdiction where the person plans to reside upon discharge, parole,
9 furlough, work release, or similar program outside the facility, or release, and one copy to the
10 office of the state's attorney in the county in which the person was convicted.

11 Section 9. That § 22-22-39 be amended to read as follows:

12 22-22-39. Any person required to register pursuant to §§ 22-22-30 to 22-22-39, inclusive,
13 who is released on probation because of the commission or attempt to commit one of the
14 offenses as described in § 22-22-30 shall, prior to release be informed of the duty to register
15 under §§ 22-22-30 to 22-22-39, inclusive, and informed of community safety zone restrictions,
16 by the court in which the person was convicted. The court shall require the person to read and
17 sign any forms as may be required by the Division of Criminal Investigation stating that the duty
18 to register, community safety zone restrictions, and the procedure for registration ~~has~~ have been
19 explained. The court shall obtain the address where the person plans to reside upon release and
20 shall report the address to the Division of Criminal Investigation. The court shall give one copy
21 of the form to the person and shall send one copy to the Division of Criminal Investigation and
22 one copy to the law enforcement agency having jurisdiction where the person plans to reside
23 upon release.

State of South Dakota

EIGHTY-FIRST SESSION LEGISLATIVE ASSEMBLY, 2006

400M0643

HOUSE ENGROSSED NO. **SB 208** - 02/15/2006

Introduced by: The Committee on Judiciary at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to establish and enhance criminal penalties regarding
2 certain sex offenders.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-22-1.2 be amended to read as follows:

5 22-22-1.2. If any adult is convicted of any of the following violations, the court shall impose
6 the following minimum sentences:

7 (1) For a violation of subdivision 22-22-1(1), ~~ten~~ fifteen years for a first offense ~~and~~
8 ~~twenty years for a subsequent offense~~; and

9 (2) For a violation of § 22-22-7 if the victim is less than thirteen years of age, ~~five~~ ten
10 years for a first offense ~~and ten years for a subsequent offense~~.

11 Section 2. That § 22-22-1.3 be amended to read as follows:

12 22-22-1.3. Any person convicted of a felony violation as provided in ~~§ 22-22-1.2~~
13 subdivisions 22-24B-1(1) to (15), inclusive, and (19) shall have included in the offender's
14 presentence investigation report ~~an~~ a psycho-sexual assessment including the following
15 information: the offender's sexual history; an identification of precursor activities to sexual
16 offending; intellectual, adaptive and academic functioning; social and emotional functioning;



1 previous legal history; previous treatment history; victim selection and age; risk to the
2 community; and treatment options recommended. If a presentence investigation is not prepared,
3 the court shall order a psycho-sexual assessment which shall be made available to the court prior
4 to sentencing. If the offender is sentenced to the state penitentiary, the psycho-sexual assessment
5 shall be attached to the official statement and supplied to the Board of Pardons and Paroles and
6 the warden.

7 Section 3. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 If an adult has a previous conviction for a felony sex crime as defined by § 22-24B-1, any
10 subsequent felony conviction for a sex crime as defined by subdivisions 22-24B-1(1) to (15),
11 inclusive, and (19) shall result in a minimum sentence of imprisonment equal to the maximum
12 term allowable under § 22-6-1, up to twenty-five years. The court may suspend a portion of the
13 prison sentence required under this section.

14 Section 4. That § 22-22-1.4 be amended to read as follows:

15 22-22-1.4. The sentencing court may impose a sentence other than that which is required by
16 § 22-22-1.2 and section 3 of this Act if the court finds that mitigating circumstances exist which
17 require a departure from the mandatory sentence imposed by § 22-22-1.2 or section 3 of this
18 Act. The court's finding of mitigating circumstances and the factual basis relied upon by the
19 court shall be in writing.

20 Section 5. That § 22-22-7 be amended to read as follows:

21 22-22-7. Any person, sixteen years of age or older, who knowingly engages in sexual contact
22 with another person, other than that person's spouse if the other person is under the age of
23 sixteen years is guilty of a Class 3 felony. If the actor is less than three years older than the other
24 person, the actor is guilty of a Class 1 misdemeanor. If an adult has a previous conviction for

1 a felony violation of this section, any subsequent felony conviction for a violation under this
2 section, is a Class 2 felony. Notwithstanding § 23A-42-2, a charge brought pursuant to this
3 section may be commenced at any time before the victim becomes age twenty-five or within
4 seven years of the commission of the crime, whichever is longer.

5 Section 6. That § 22-24A-3 be amended to read as follows:

6 22-24A-3. A person is guilty of possessing, manufacturing, or distributing child pornography
7 if the person:

- 8 (1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the
9 simulation of such an act;
- 10 (2) Causes or knowingly permits the creation of any visual depiction of a minor engaged
11 in a prohibited sexual act, or in the simulation of such an act; or
- 12 (3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of
13 a minor engaging in a prohibited sexual act, or in the simulation of such an act.

14 Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or
15 custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

16 A violation of this section is a Class 4 felony. If a person is convicted of a second or
17 subsequent violation of this section within fifteen years of the prior conviction, the violation is
18 a Class 3 felony.

19 The court shall order ~~a mental examination~~ an assessment pursuant to § 22-22-1.3 of any
20 person convicted of violating this section. ~~The examiner shall report to the court whether~~
21 ~~treatment of the person is indicated.~~

22 Section 7. That § 22-22-24.3 be amended to read as follows:

23 22-22-24.3. A person is guilty of sexual exploitation of a minor if the person causes or
24 knowingly permits a minor to engage in an activity or the simulation of an activity that:

- (1) Is harmful to minors;
- (2) Involves nudity; or
- (3) Is obscene.

Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation a Class 5 felony.

The court shall order ~~a mental examination~~ an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section. ~~The examiner shall report to the court whether treatment of the person is indicated.~~

Section 8. That § 22-24A-5 be amended to read as follows:

22-24A-5. A person is guilty of solicitation of a minor if the person eighteen years of age or older:

- (1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or
- (2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.

The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a

prosecution under this section.

Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 5 felony.

The court shall order ~~a mental examination~~ an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section. ~~The examiner shall report to the court whether treatment of the person is indicated.~~

Section 9. That chapter 22-24B be amended by adding thereto a NEW SECTION to read as follows:

If any person is convicted of a sex crime as defined in § 22-24B-1 that is subject to sex offender registration requirements as defined in §§ 22-24B-2 to 22-24B-14, inclusive, the prosecuting attorney shall prepare a summary description of the offense and forward this to the Division of Criminal Investigation for inclusion on the sex offender registry.

Any person who, at the time of the effective date of this Act, is subject to sex offender registration or is subject to sex offender registration as a result of a foreign criminal conviction, may have a summary description of the offense developed by the Division of Criminal Investigation and entered on the registry, if the information is available.

The term, foreign criminal conviction, as used in this section and section 11 of this Act, means any conviction issued by a court of competent jurisdiction of another state, federal court, Indian tribe, the District of Columbia, or a commonwealth, territory, or possession of the United States which is enforceable as if the order was issued by a court in this state.

Nothing in this section allows the release of the name of the victim of the crime to any

1 person other than law enforcement agencies, and the name of the victim is confidential.

2 Section 10. That chapter 22-24B be amended by adding thereto a NEW SECTION to read
3 as follows:

4 Any person required to register pursuant to §§ 22-24B-1 to 22-24B-14, inclusive, who is
5 incarcerated or is a juvenile offender committed to the Department of Corrections, shall register
6 within five days of admission to the correctional facility or commitment to the Department of
7 Corrections.

8 The Department of Corrections or administering authority of the county or city jail or
9 juvenile detention center shall submit required sex offender registrations to the Division of
10 Criminal Investigation.

11 The administering authority of the correctional facility shall notify the Division of Criminal
12 Investigation if a person required to register changes status from an inmate to parolee or
13 probationer or if an inmate is transferred to a different address, informing the division of the
14 date of transfer and address of the new location.

15 Section 11. That chapter 22-24B be amended by adding thereto a NEW SECTION to read
16 as follows:

17 Any person with a foreign criminal conviction, which requires the person to register either
18 as a sex offender pursuant to § 22-24B-2, pursuant to the laws of the state where the conviction
19 took place, or pursuant to any court order, shall be required to register within five days of their
20 arrival in South Dakota. A violation of this section is a Class 4 felony.

21 Section 12. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Any person who knowingly assists, harbors, or conceals a sex offender in eluding law
24 enforcement or provides false information regarding the residence or whereabouts of a sex

1 offender is guilty of a Class 5 felony.

2 Section 13. That chapter 24-15A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 Upon recommendation of sex offender treatment program staff and following a review of
5 the inmate's history, treatment status, risk of re-offense, and psycho-sexual assessment, the
6 warden may, at any time prior to the inmate's final discharge, recommend to the Board of
7 Pardons and Paroles that parole eligibility pursuant to §24-15A-32 be withheld on an inmate
8 convicted of a felony sex offense as defined in §22-24B-1.

9 The board may, after a hearing, determine if parole eligibility is to be withheld. The decision
10 of the board to withhold parole eligibility is final.

11 Section 14. That § 24-15A-32 be amended to read as follows:

12 24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of
13 life or death, or an indeterminate sentence which is not yet set to a term of years by the board
14 or determined to be ineligible for parole as authorized in section 13 of this Act, shall have an
15 initial parole date set by the department. This date shall be calculated by applying the percentage
16 indicated in the following grid to the full term of the inmate's sentence pursuant to § 22-6-1. The
17 following crimes or an attempt to commit, or a conspiracy to commit, any of the following
18 crimes shall be considered a violent crime for purposes of setting an initial parole date: murder,
19 manslaughter, rape, aggravated assault, riot, robbery, burglary in the first or second degree,
20 arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and 22-22-19.1, child abuse,
21 felony sexual contact as defined in § 22-22-7.2, felony stalking as defined in §§ 22-19A-2 and
22 22-19A-3, photographing a child in an obscene act, felony assault as defined in § 22-18-26,
23 felony simple assault as defined in § 22-18-1, commission of a felony while armed as defined
24 in §§ 22-14-12 and 22-14-13.1, discharging a firearm at an occupied structure or motor vehicle

as defined in § 22-14-20, discharging a firearm from a moving vehicle as defined in § 22-14-21,
~~and~~ criminal pedophilia as defined in § 22-22-30.1, and threatening to commit a sexual offense
as defined in section 15 of this Act:

Felony Convictions				
Felony Class	First	Second	Third	
Nonviolent				
Class 6	.25	.30	.40	
Class 5	.25	.35	.40	
Class 4	.25	.35	.40	
Class 3	.30	.40	.50	
Class 2	.30	.40	.50	
Class 1	.35	.40	.50	
Violent				
Class 6	.35	.45	.55	
Class 5	.40	.50	.60	
Class 4	.40	.50	.65	
Class 3	.50	.60	.70	
Class 2	.50	.65	.75	
Class 1	.50	.65	.75	
Class B	1.0	1.0	1.0	
Class A	1.0	1.0	1.0	

Each inmate shall serve at least sixty days prior to parole release. Inmates with life sentences
are not eligible for parole. An initial parole date through the application of this grid may be
applied to a life sentence only after the sentence is commuted to a term of years. A Class A or
B felony commuted to a number of years shall be applied to the Class 1 violent column of the
grid

Section 15. That chapter 22-22 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any person who has been convicted of a felony sex offense as defined in § 22-24B-1 who
3 directly threatens or communicates specific intent to commit further felony sex offenses is guilty
4 of threatening to commit a sexual offense. Threatening to commit a sexual offense is a Class 4
5 felony.

6 Section 16. No law enforcement agency, employee of a law enforcement agency, employee
7 or official of a state or county agency and any individual contracting or appointed to perform
8 services under this Act may be civilly liable for good faith conduct under this Act.